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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/884,828	06/18/2001	Pierre P. Repper	932-CAL	2484

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EXAMINER

CLARKE, SARA SACHIE

ART UNIT PAPER NUMBER

3749

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/884,828	REPPER ET AL.	
	Examiner	Art Unit	
	Sara Clarke	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 April 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 15-17 and 20-83 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-13, 15-17, 22-57 and 61-83 is/are allowed.
- 6) ☒ Claim(s) 58-60 is/are rejected.
- 7) ☒ Claim(s) 20 and 21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

The benefit claim filed on April 28, 2004, was not entered because the required reference was not timely filed within the time period set forth in 37 CFR 1.78(a)(2) or (a)(5). See MPEP 201.11(V).

If the application is an application filed under 35 U.S.C. 111(a) on or after November 29, 2000, the reference to the prior application must be submitted during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. If the application is a nonprovisional application which entered the national stage from an international application filed on or after November 29, 2000, after compliance with 35 U.S.C. 371, the reference to the prior application must be made during the pendency of the application and within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) or sixteen months from the filing date of the prior application. See 37 CFR 1.78(a)(2)(ii) and (a)(5)(ii).

If applicant desires priority under 35 U.S.C. 120 and 119(e) based upon previously filed applications, applicant must file a petition for an unintentionally delayed benefit claim under 37 CFR 1.78(a)(3) or (a)(6). The petition must be accompanied by: (1) the reference required by 35 U.S.C. 120 and/or 119(e) and 37 CFR 1.78(a)(2) or (a)(5) to the prior application (unless previously submitted); (2) a surcharge under 37 CFR 1.17(t); and (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2) or (a)(5) and the date the claim was filed was unintentional. The Director may require additional information where there is a question

whether the delay was unintentional. The petition should be addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

Until applicant complies with the requirements of the paragraph above, the benefit of the filing date of the provisional application under 35 U.S.C. 119(e) and the benefit of the filing date of the PCT application under 35 U.S.C. 120 cannot be afforded. On page 19 of the response received April 28, 2004, applicant states: "since domestic priority rights are claimed a certified copy of the PCT application is no longer needed." Does this mean applicant is no longer claiming foreign priority to the PCT application under 35 U.S.C. 119(a)-(d)?

#### ***Claim Objections***

Claims 20 and 21 are objected to because they both depend from cancelled claim 18. These claims have been treated as though they depend from claim 13. Nonetheless, correction is required.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 58 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The original disclosure does not provide support for "said second electronically

controlled mechanism is capable of stopping and starting flow of gas external to said valve." Based upon the original disclosure, it appears that valves 112 and 113 control the flow through (i.e., internally to) themselves, not externally.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 58 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 58 it is unclear what is meant by "said second electronically controlled mechanism is capable of stopping and starting flow of gas external to said valve." As discussed above, the original disclosure does not provide an explanation for this term. Moreover, applicant's discussion of this claim limitation does not clarify its meaning.

The meaning and scope of claim 58 is so unclear that it would require speculative assumptions on the part of the examiner to make an art rejection. Accordingly, an art-based rejection has not been made in this office action. That an art-based rejection has not been applied against claim 58 is not an indication that this claim contains allowable subject matter.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 59 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frasnetti et al. (EP 773409) in view of Meslif (US 5388984).

Frasnetti et al. discloses the invention substantially as claimed with the exception the valve comprising a time based sequencer portion, wherein the sequencer portion is capable of starting and stopping flow of gas and the microcontroller is connected to provide a signal for said stopping and starting.

Meslif discloses an electronically controlled stove burner valve. Meslif teaches the use of providing a controller 80 and a valve, said valve comprising a modulating portion 10 and a time based sequencer portion 70, electronically setting a level to said modulating portion wherein said modulating portion can be set in a range of levels to provide a range of flow rates (see column 5, lines 38-40), wherein said microcontroller is connected to provide a signal for said electronic setting (see column 5, lines 34-40 and Fig. 1), and electronically setting said time based sequencer portion to provide a selected BTU output level(see column 5, lines 38-40), wherein said sequencer is capable of stopping and starting flow of gas (see column 3, lines 41-57), wherein said microcontroller is connected to provide a signal for stopping and for said starting (see Fig. 1).

The apparatus of Meslif and manner of using it allows for being able to modulate the flow rate for devices of reduced size such as a cooking plate. See column 1.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to have provided the heating of Frasnetti with the time based sequencer, which stops and starts flow, as taught by Meslif for the purpose of being

able to modulate the flow rate for devices of reduced size.

Claim 60 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frasnetti et al. (EP 773409) in view of Meslif (US 5388984) as applied to claim 59 above, and further in view of Akamatsu (US 5429111).

Frasnetti et al. and Meslif disclose the invention substantially as claimed with the exception of a display and an in-line safety valve.

Akamatsu discloses a burner and teaches the use of a display 56 for informing an operator of the condition of thermal power.

Thus, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to provide the burner of Frasnetti et al. and Meslif with a display as taught by Akamatsu for the purpose of informing an operator of the condition of thermal power.

#### ***Response to Amendment***

The amendment filed April 28, 2004, does not comply with the requirements of 37 CFR 1.121(c)(1) in that the claim listing does not commence on a separate sheet. Moreover, applicant is directed to 37 CFR 1.121(c), which lists the permitted status identifiers. In response to this office action, even if applicant does not make any amendments to the claims, applicant is required to provide a listing of the claims commencing on a separate sheet of paper with permitted status identifiers.

#### ***Response to Arguments***

Regarding claim 58, applicant argues: "in Damrath, while the throttle resistances are preferably different, possibly by having different dimensions, all the mechanisms are the same." The examiner observes that having different dimensions meets the claim

limitation of the flow control mechanisms being of a different type. The claim does not specify that the mechanisms are somehow different. See MPEP 2145(VI).

Regarding the limitation in claim 58 that the second electronically controlled mechanism is capable of stopping and starting flow of gas external to the valve, as noted in the rejection under 35 U.S.C. 112, 2<sup>nd</sup> paragraph above, it is not understood what is meant by this claim limitation. Arguments cannot be made based up speculation as to its meaning.

The examiner disagrees with applicant's arguments regarding claim 59. According to applicant, "Both Frasnetti and Meslif only provide control over duty cycle." Thus, applicant admits that a time based sequencer portion is taught by the references. On the other hand, applicant argues that neither Frasnetti nor Meslif disclose providing a modulation portion in addition to a duty cycle portion. Looking at applicant's own specification, it appears that the modulation portion refers to valve 113. Both Frasnetti and Meslif teach the use of a modulating valve (element 3 in Frasnetti and element 10 in Meslif). Thus, since the combination of Frasnetti and Meslif teach all of the claimed elements, the rejection of claim 59 is deemed proper.

#### ***Allowable Subject Matter***

Claims 1-13, 15-17, 22-57, 61-83 allowable. Claims 20 and 21 would be allowable if the objection to these claims were corrected.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Takada et al. (JP 61-282720) discloses a stove burner having a safety valve 11 and a proportional valve 1 and Yamashita et al. (JP 61-276628)



discloses a stove burner having a safety valve 19 and a proportional control valve 50.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### ***Contact Information***

Any inquiry concerning this or earlier communications from the examiner should be directed to Sara Clarke whose phone number is 703-308-1388. The examiner normally can be reached Mon-Fri, 8:30-1:00.


If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached at 703-308-1935. The fax number for the organization where this application is assigned is 703-872-9306.

Status information for an application is available from the Patent Application Information Retrieval (PAIR) system. Status information for published applications is available from Private or Public PAIR. Status information for unpublished applications is

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available through Private PAIR only. For more information about PAIR, see <http://pair-direct.uspto.gov>. For questions on access to Private PAIR, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sara Clarke   
Primary Examiner  
Art Unit 3749

July 28, 2004